

### **REMARKS**

Currently claims 1, 4-6 are pending. The Examiner has objected to the claims as set forth in paragraphs 2, 3 and 4 of the Official Action. In response thereto, Applicant has amended claims 1, 4 and 5. In particular, dependent claims 4 and 5 have each been amended to be dependent upon independent claim 1 and those are no longer dependent upon a previously cancelled claim. Claim 1 has also been amended to correct the spelling of location and an appropriate antecedent basis has been provided for surface of the gemstone.

The Examiner, in paragraph 6, has rejected claims 1, 4-6 under 35 USC § 103(a) as being unpatentable over Smith US 6,187,213 in view of Patton et al. US 2004/0000575.

Applicant respectfully submits that the Patton et al. reference is not an appropriate reference. In particular, the cited publication is in fact a publication of the instant application. As can be seen from the front cover of the publication it is based on US Application Serial No. 10/607,185 which is the serial number of the instant application. Clearly ones own application cannot be used as a base for rejecting the application. In addition, Applicant would also like to note that the instant application is a divisional application of U.S. Patent 6,624,385. In particular, this application was filed in response to a restriction requirement set forth in the Official Action dated 3/28/03 and received during prosecution of the 6,624,385. Accordingly, this instant application is the result of a restriction requirement. A terminal disclaimer is not appropriate. Thus, in view of the foregoing, the current rejection as set forth cannot stand.

With regard to the Smith reference, Applicant respectfully incorporates the arguments previously set forth faxed to the USPTO on 1/11/05.

In summary, Applicant respectfully submits that the claims in their present form are in condition for allowance and such action is respectfully requested.

Respectfully submitted,



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